IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

RSA.No. 165 of 2006()

AS.73/1999 of SUB COURT,NEYYATTINKARA
OS.695/1994 of I ADDL.M.C.,NEYYATTINKARA

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APPELLANT/DEFENDANTS

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1. KOCHAPPI CHELLAPPAN,
   CHILAVAKOTTU PARANKIMAVILA VEEDU,
   MARANALLOOR DESOM,
   MARANELLOOR VILLAGE.

2. KALU SARASAMMA,
   CHILAVAKOTTU PARANKIMAVILA VEEDU,
   MARANALLOOR DESOM,
   MARANELLOOR VILLAGE.

3. SARASAMMA SREEKUMARI,
   CHILAVAKOTTU PARANKIMAVILA VEEDU,
   MARANALLOOR DESOM,
   MARANELLOOR VILLAGE.

BY ADV. SRI.DINESH MATHEW J.MURICKEN
SRI.P.V.BALAKRISHNAN

RESPONDENTS: PLAINTIFFS

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1. KAMALAKSHY VIJAYAMMA,
   ERECHILAVANKOTTU KIZHAKKUMKARA PADMAVILASAM VEEDU,
   MARANALLOOR DESOM,
   MARANELLOOR VILLAGE.

2. SREEDHARA PANICKER MOHANDAS,
   SIVANANDA VILASATHU VEEDU,
   CHEMBABACODE, PARACHAL MURI,
   KULATHUMMAL VILLAGE.

3. VIJAYAMMA GEETHA KUMARI,
SIVANANDA VILASATHU VEEDU,
CHEMBABACODE, PARACHAL MURI,
KULATHUMMAL VILLAGE.

4. RAMAN KUTTY PADMAKUMAR,
ERACHILAVANKOTTU KIZHAKKUMKARA,
PADMAVILASAM VEEDU,
MARANALLOOR DESOM,
MARANELLOOR VILLAGE.

5. KUMARI SHEELA,
D/O.VIJAYAMMA,
SIVANANDA VILASATHU VEEDU,
CHEMBABACODE, PARACHAL MURI,
KULATHUMMAL VILLAGE.

6. PRABHAKARAN CHILAVAKOTTA PARANKUMAVILA
VEEDU,
MARANALLOOR DESOM,
MARANELLOOR VILLAGE.

R1 TO R5 BY ADV. SRI.V.SURESH
SRI. G.SUDHEER
R6 BY SRI.ANTONY JOSEPH V.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

R.S.A.No.165 OF 2006

Dated this the 11th day of December, 2006

JUDGMENT

1. Heard Adv.Sri.P.V.Balakrishnan, counsel for the appellant and Adv.Sri.V.Suresh, counsel for the respondent.

2. The litigation relates to immovable properties. The first appeal of defendants 1 to 3 was disposed of by judgment dated 8.7.2005. On an application for review, the lower appellate court ordered on 6.9.2005 on I.A.No.1030/05 that a perusal of the records would show that argument notes were submitted by the counsel for the appellant and the statement to the contrary, in the judgment dated 8.7.2005, is wrong. The mere production of the argument notes or its availability would not have prompted me to set aside the judgment dated 8.7.2005. But a perusal of that judgment would show that none of the arguments raised by the appellant has been appropriately considered. My be that the parties having furnished notes of argument, they would not have pursued any oral arguments.

The judgment of the lower appellate court, though reiterates the findings of the trial court, does not inspire confidence to be sustained on ground that appropriate authority under Section 96 of the Code has been duly exercised.

3. Under such circumstances, without stating anything on merits, the judgment dated 8.7.2005 in A.S.73/99 of the Sub Court Neyyattinkara is vacated in exercise of power under Article 227 of the Constitution of India and the case is remanded to that court to be heard and disposed of at the earliest, at any rate, before the civil courts close for the mid summer vacation, 2007. The parties will appear before the court below on 4.1.2007.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.